

EXHIBIT D

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

IQUATICS TROPICAL FISH LLC,	:	CIVIL ACTION NO.: 22-A-01926-10
	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
DIAL GOD LLC,	:	
	:	
Defendant.	:	

ORDER GRANTING ENTRY OF DEFAULT AND RULE NISI FOR HEARING ON DAMAGES


Plaintiff filed a Motion for Entry of Default Judgment against Defendant on July 8, 2022. Plaintiff's Complaint in this action was filed on March 10, 2022. The Defendant was properly served as provided by law. The Defendant has not filed an Answer. The Court finds that the Defendant has failed to timely appear, plead or otherwise defend as provided by law. Under Georgia Law, "default operates as an admission [by the defaulting defendant] of the well-pled factual allegations in a complaint." *EnduraCare Therapy Mgmt., Inc. v. Drake*, 298 Ga. App. 809, 811 (2009) (citing O.C.G.A. § 9-11-55(a)). Upon review of the record in this case, the Court finds that Defendant is in default. However, as the Complaint requests damages that are unliquidated, the final determination of damages shall be determined at the conclusion of an evidentiary hearing as set forth hereinafter.¹ Defendant may be present and participate in said

¹ Where damages in the complaint are not liquidated, the Court is required to hold a hearing on damages before a judgment can be entered. Illustrative of this legal concept, the Georgia Court of Appeals has held: "A default simply does not require blind acceptance of a plaintiff's erroneous conclusions of law. Nor does a default preclude a defendant from showing that under the facts deemed admitted, no claim existed which would entitle plaintiff to recover." *EnduraCare Therapy Mgmt. v. Drake* at 811. Therefore, even in default, the burden remains on the Plaintiff to introduce with sufficient and admissible evidence both an actionable claim and a specific amount of damages.

hearing and may introduce evidence as to the amount of damages; but cannot disprove any facts alleged in the Complaint. *O'Connor v. Brucker*, 117 Ga. 451 (1903).

Accordingly, a hearing in this case is set for the 8th day of August, 2022, at in **Courtroom** 1E for a hearing on Damages.²

SO ORDERED this 14th day of July, 2022.



Regina J. Matthews, Judge
Gwinnett County Superior Court
By designation

cc: Counsel for Plaintiff

² Plaintiff is hereby notified that it must file a Certification pursuant to U.S.C.R. 15 prior to the date of hearing, as required by law, in order for the Court to grant any judgment relief on Plaintiff's Motion for Default Judgment.